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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 LEGALZOOM.COM, INC.,)

14 Plaintiff,)

15 v.)

16 ROCKET LAWYER INC.,)

17 Defendant.)
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CASE NO.: 5:15-mc-80003-NC

NONPARTY GOOGLE INC.'S MOTION
FOR ATTORNEYS' FEES PURSUANT TO
FRCP 45(d)(1)

Before: Hon. Nathanael M. Cousins

1 In accordance with the Court's Order denying LegalZoom.com, Inc.'s Motion to Compel
 2 and Rule 45(d)(1), Google Inc. requests reimbursement of its attorneys' fees in light of
 3 LegalZoom's failure to avoid the imposition of undue burden. The accompanying Declaration of
 4 David H. Kramer explains that the attorneys' fees reasonably incurred by Google in opposing
 5 LegalZoom's motion total \$19,253. Google also requests that it be reimbursed an additional
 6 \$5,000 for the attorneys' fees incurred in preparing this request.¹

7 **I. LegalZoom Failed to Take Reasonable Steps to Avoid Imposing Undue Burden on**
 8 **Google**

9 As set forth both in Google's Opposition to LegalZoom's Motion to Compel, and in the
 10 Court's Order denying that motion, LegalZoom failed in several ways to comply with Rule 45's
 11 mandate to avoid unduly burdening a nonparty in the discovery process.²

- 12 • LegalZoom's subpoena to Google demanded Google search for, review and produce
 13 documents and prepare a 30(b)(6) witness on the day after Thanksgiving weekend, only
 14 seven working days after it served the subpoena. It called upon Google to produce "any
 15 and all" documents it had on several overbroad topics.
- 16 • LegalZoom demanded that Google produce documents that were presumptively in the
 17 possession of Rocket Lawyer Inc., a party to the litigation. Google asked repeatedly why
 18 LegalZoom was seeking these documents from Google rather than Rocket Lawyer,
 19 including in its objections to the subpoena, in two meet-and-confer calls, in various
 20 written correspondence, in Google's opposition brief to the Motion to Compel, and at the
 21 hearing on the motion. LegalZoom never provided an explanation. LegalZoom vaguely
 22 asserted that there were gaps in Rocket Lawyer's production, but, as the Court
 23 recognized, "[d]espite extensive conferring and briefing, LegalZoom has not specified the
 24 parameters of the 'gaps' that Google needs to fill."
- 25 • LegalZoom failed to reasonably meet-and-confer. It refused to address Google's
 26 concerns and objections and refused to narrow its requests. When Google submitted a
 27 written offer of compromise at LegalZoom's request, LegalZoom ignored it for three
 28 weeks, then rejected the offer without any explanation or counter and filed its motion to
 compel.
- The day before the scheduled hearing, the Court issued a tentative ruling denying
 LegalZoom's Motion, explaining LegalZoom failed to comply with Rule 45. Although it

1 ¹ On April 6, 2015, LegalZoom filed a Motion for Relief from the Court's Order denying
 LegalZoom's Motion to Compel (Dkt. #13). Google believes the Motion for Relief to be
 unfounded, and respectfully reserves the right to seek reimbursement of fees it incurs in
 opposing the Motion for Relief once that motion has been resolved

² Google refers the Court to Google's Opposition to the Motion to Compel (Dkt. #5) and the
 Declaration of Jacob T. Veltman in support thereof (Dkt. #5-1) for a more thorough recitation of
 the procedural background of this dispute.

1 lacked a valid basis for contesting the tentative, LegalZoom nevertheless required Google
2 to prepare for and appear at the hearing on the matter.

3 On March 23, 2015, the Court issued its Order, adopting and expanding upon the
4 reasoning in its tentative. It held that LegalZoom had failed to show “that it took ‘reasonable
5 steps’ to avoid imposing an undue burden on non-party Google.” Order Denying Motion to
6 Compel at 4. Citing Rule 45’s provision mandating sanctions in such circumstances, the Court
7 invited Google to submit a request for its fees. *Id.*; *see also* Fed.R.Civ.P. 45(d)(1) (a Court
8 “must enforce this duty and impose an appropriate sanction-which may include . . . reasonable
9 attorney’s fees” on a party that fails to take reasonable steps to avoid imposing undue burden on
10 a nonparty); *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. 11-mc-80300,
11 2012 U.S. Dist. LEXIS 110824, at *11 (N.D. Cal. Aug. 7, 2012) (“Rule 45 Sanctions are
12 Mandatory for Failure to Take Reasonable Steps”).

13 **II. Google Requests Its Reasonable Attorneys’ Fees**

14 Google has taken a conservative approach in calculating the amount for which it seeks
15 reimbursement here. As explained in the accompanying Declaration of David H. Kramer,
16 Google is not seeking reimbursement for fees incurred in preparing its objections to the
17 subpoena, or even for the extended meet-and-confer process over LegalZoom’s subpoena.
18 Rather, Google seeks only amounts incurred in opposing LegalZoom’s motion to compel, and
19 then appearing in Court to argue that motion. *See, e.g., In re NCAA Student-Athlete Name &*
20 *Likeness Licensing Litig.*, 2012 U.S. Dist. LEXIS 110824, at *9-10 (awarding \$67,384.64 under
21 Rule 45 to nonparties forced to respond to motion to compel seeking to enforce “substantially
22 overly broad” requests); *In re Morreale Hotels LLC*, 517 B.R. 184, 198 (Bankr. C.D. Cal. 2014)
23 (awarding \$25,000 in fees under Rule 45 where the subject subpoenas purported to require the
24 movant “to canvas every entity in their large corporate structure to satisfy the unreasonably wide
25 breadth of the [] subpoenas”). The specific amounts itemized in the Kramer Declaration have
26 been invoiced to Google. The rates charged to Google are at or below those reasonably charged
27 in the market for counsel of similar experience. The amounts are reasonable given the work
28

1 performed, and given the importance of the issues presented both for Google (which routinely
2 receives non-party subpoenas) and other non-parties.

3 Google also requests that it be awarded \$5,000 to reimburse it for the fees incurred in
4 preparing this motion. Google proposed a compromise on this matter to LegalZoom, offering to
5 forego this motion in exchange for prompt payment of the fees it had accrued to that point.
6 LegalZoom did not respond, necessitating the preparation of both this motion and the
7 accompanying declaration. The fees Google incurred for that additional work are properly
8 reimbursed as well. *See, e.g., In re NCAA Student-Athlete Name & Likeness Licensing Litig.*,
9 2012 U.S. Dist. LEXIS 110824, at *10 (awarding \$6,100 for fees incurred in preparing motion
10 for fees under Rule 45); *Bryan v. UPS, Inc.*, No. 01-1730, 2007 U.S. Dist. LEXIS 76146, at *15
11 (N.D. Cal. Sept. 28, 2007) (adopting special master report that awarded “fees-for-fees”).

12 CONCLUSION

13 For these reasons, Google respectfully requests that the Court award it \$24,253 in
14 accordance with its prior Order and Rule 45(d)(1).
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16 Respectfully submitted,

17 Dated: April 6, 2015

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18 By: s/ David H. Kramer
19 David H. Kramer

20 *Attorneys for Nonparty Google Inc.*
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